Minnesota Mining and Manufacturing Corporation; Replogle Globes, Inc., Candle Corporation of America, Nalco Chemical Company, Parisian Novelty Company, Meyercord Corporation, Wallace Computer Services, Inc. and General Packaging Products, Inc. This action lists the FIP revisions USEPA is proposing to approve and provides an opportunity to request a public hearing. A detailed rationale for approving these requests is presented in the final rules section of this **Federal Register**, where USEPA is approving the revision requests as a direct final rule without prior proposal because USEPA views these as noncontroversial revisions and anticipates no adverse comments. If no adverse comments or requests for a public hearing are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments or a public hearing request, the direct final rule will be withdrawn. The USEPA will institute a second comment period on this notice only if a public hearing is requested. Any parties interested in commenting on this notice should do so at this time. If a request for a public hearing is received, USEPA will publish a notice in the **Federal Register** announcing a public hearing. The final rule on this proposed action will address all comments received.

DATES: Comments on this proposal must be received by April 20, 1995. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a public hearing should be submitted to J. Elmer Bortzer by April 20, 1995.

ADDRESSES: Written comments and requests for a public hearing on this proposed action should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments should be strictly limited to the subject matter of this proposal.

DOCKET: Pursuant to section 307(d)(1)(B) of the Clean Air Act (Act), 42 U.S.C. 7607(d)(1)(B), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, A–94–39, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Fayette Bright before visiting the Chicago location and Rachel Romine before visiting the Washington, D.C. location. A reasonable fee may be charged for copying.

The United States Environmental Protection Agency, Region 5, Regulation Development Branch, Eighteenth Floor, Southeast, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–6069.

United States Environmental Protection Agency, Docket No. A–94–39, Air Docket (LE–131), Room M1500, Waterside Mall, 401 M Street SW., Washington, D.C. 20460, (202) 245–3639.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 28, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–6004 Filed 3–20–95; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 70

[AD–FRL–5174–4]

Title V Clean Air Act Proposed Interim Approval of Operating Permits Program; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA is proposing interim approval of the operating permits program submitted by the District of Columbia. This program was submitted by the District for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources. The rationale for proposing interim approval is set forth in this notice; additional information is available at the address indicated below. This action is being taken in accordance with the provisions of the Clean Air Act.

DATES: Comments on this proposed action must be received in writing by April 20, 1995.

ADDRESSES: Comments should be submitted to Jennifer Abramson at the Region III address indicated. Copies of the District's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Abramson (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–2923.

SUPPLEMENTARY INFORMATION:

I. Background

As required under Title V of the Clean Air Act (CAA) as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The CAA requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the CAA and part 70, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, EPA must establish and implement a federal operating permits program.

Following final interim approval, if the District fails to submit a complete corrective program for full approval by 6 months before the interim approval period expires, EPA would start an 18-month clock for mandatory sanctions. If the District then failed to submit a complete corrective program before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the CAA. Such a sanction would remain in effect until EPA determined that the District had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the

expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA disapproved the District's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District had submitted a revised program and EPA had determined that this program corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In all cases, if, six months after EPA applied the first sanction, the District had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if the District has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a District program by the expiration of an interim approval period, EPA must promulgate, administer and enforce a federal operating permits program for the District upon the date the interim approval period expires.

On January 13, 1994, the District of Columbia submitted an operating permits program for review by EPA. The submittal was supplemented by additional materials on March 11, 1994, and was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). The submittal includes an Administrator's letter, a description of the District's title V program, permitting regulations, a Corporation Counsel's legal opinion, permitting program documentation, a permit fee demonstration, a description of compliance tracking and enforcement program, and provisions implementing the requirements of other titles of the CAA.

II. Summary and Analysis of the District's Submittal

The analysis contained in this notice focuses on the major portions of the District's operating permits program submittal: regulations and program implementation, variances, fees, support materials, and provisions implementing the requirements of titles III and IV of the CAA. Specifically, this notice addresses the deficiencies in the District's submittal which will need to be corrected prior to full approval by EPA. These deficiencies as well as other issues related to the District's operating permit program are discussed in detail in the Technical Support Document (TSD). The full program submittal and the TSD are available for review as part of the public docket. The docket may be viewed during regular business hours at the EPA Region III office listed in the **ADDRESSES** section of this document.

A. Regulations and Program Implementation

The District of Columbia's operating permit program is primarily defined by regulations adopted as chapter 3 of subtitle I of title 20 of the District of Columbia Municipal Regulations (20 DCMR). Provisions for enforcement authority are located in other Chapters of subtitle I of 20 DCMR. The following analysis of the District's operating permit regulations corresponds directly with the format and structure of part 70.

Section 70.2 Definitions

The District's regulations substantially meet the requirements of 40 CFR 70.2 for definitions. The following changes must be made to chapter 3 in order to fully meet the requirements of 40 CFR 70.2.

1. The § 399.1 definition of ''Fugitive emissions'' is entitled ''Emissions emissions''. This typographical error must be corrected to clarify the meaning of the term fugitive emissions as the term is used in the chapter 3 operating permits regulations.

2. The § 399.1 definition of ''Title I modification or modification under any provision of Title I of the Act'' does not expressly include changes reviewed under a minor source preconstruction review program (''minor NSR changes''). EPA is currently in the process of determining the proper definition of this term. As further explained below, EPA has solicited public comment on whether the phrase ''modification under any provision of Title I of the Act'' in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act. This would include state preconstruction review programs approved by EPA as part of a State Implementation Plan (SIP) under section 110(a)(2)(C) of the Clean Air Act.

On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other things, allow state programs with a more narrow definition of ''Title I modifications'' to receive interim approval (59 FR 44572). EPA explained its view that the preferred reading of ''Title I modifications'' includes minor NSR, and solicited public comment on the proper interpretation of that term (59 FR 44573). EPA stated that if, after considering the public comments, it continued to believe that the term ''Title I modifications'' should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to allow states with a narrower definition to be eligible for interim approval.

EPA hopes to finalize its rulemaking revising the interim approval criteria under 40 CFR 70.4(d) expeditiously. If EPA establishes in its rulemaking that the definition of ''Title I modifications'' can be interpreted to exclude changes reviewed under minor NSR programs, the District's definition of ''Title I modification or modification under any provision of Title I of the Act'' would be fully consistent with part 70. Conversely, if EPA establishes through the rulemaking that the definition must include changes reviewed under minor NSR, the District's definition of ''Title I modification or modification under any provision of Title I of the Act'' will not fully meet the 40 CFR 70.2 requirements for definitions. If the impact of this deficiency becomes a basis for interim approval as a result of EPA's rulemaking, the District would be required to revise the section 399.1 definition to conform to the requirements of part 70.

Accordingly, this proposed approval does not identify the District's definition of ''Title I modification or modification under any provision of Title I of the Act'' as necessary grounds for either interim approval or disapproval. Again, although EPA has reasons for believing that the better interpretation of ''Title I modifications'' is the broader one, EPA does not believe that it is appropriate to determine whether this is a program deficiency until EPA completes its rulemaking on this issue.

Section 70.5 Permit Applications

The District's regulations substantially meet the requirements of

40 CFR 70.5 for permit applications. The following changes must be made to Chapter 3 in order to fully meet the requirements of 40 CFR 70.5:

1. Section 301.1(b)(6)(B) must be modified to clarify that applications for permit renewal must contain both a compliance plan, as required by § 301.3(h), and a compliance certification, as required by § 301.3(i).

2. The District must revise § 301.3(c)(1) to ensure that all regulated air pollutant emissions which are subject to applicable requirements, including emissions from nonmajor sources subject to section 111 or 112 of the CAA, and sources solely subject to Part 60, Subpart AAA—Standards of Performance for new Residential Wood Heaters and Part 61, Subpart M—National Emissions Standard for Hazardous Air Pollutants (NESHAP) for Asbestos, section 61.145, Standard for Demolition and Renovation, will be described in permit applications.

During the interim period, the District will be expected to require sources to prepare permit applications which include all information needed to determine the applicability of any applicable requirement, in accordance with § 301.3.

Accordingly, the District will also be expected to issue permits to major sources that include all applicable requirements, in accordance with § 302.1.

3. Section 301.3(g) must be revised to correct the misreferenced sections of the District's regulations which address alternate operating scenarios and emissions trading.

4. Section 301.3(h)(3)(C) must be revised to clarify that any schedule of compliance shall be supplemental to and shall not sanction noncompliance with the applicable requirements on which it is based.

Sections 70.4 and 70.6 Permit Content

The District's regulations substantially meet the requirements of 40 CFR 70.4 and 40 CFR 70.6 for permit content. The following changes must be made to Chapter 3 in order to fully meet the requirements of 40 CFR 70.4 and 40 CFR 70.6:

1. Section 302.1(k) must be revised to clarify that terms and conditions for the trading or averaging of emissions must meet all applicable requirements and the requirements of the operating permits program.

2. Section 302.3(e)(6) must be renumbered to § 302.3(f) to be consistent with the structure of 40 CFR 70.6(c)(6). Such a change is needed to clarify that the permit will include provisions required by the Mayor to ensure compliance.

3. Section 302.4(e) must be revised to clarify that requests for coverage under a general permit must meet the permit application requirements of Title V of the Clean Air Act, and include all information necessary to assure compliance with the general permit.

4. The section 302.8 provisions regarding operational flexibility must be restructured to clarify that the three types of operational flexibility (Section 502(b)(10) changes, emissions trading under SIP, and emissions trading for the purposes of complying with federally enforceable emissions cap) are available only when the conditions specified in 40 CFR 70.4(b)(12) are met.

5. Section 302.8(b) must be revised to clarify that compliance with emissions trading provisions in a permit will be determined according to requirements of the applicable SIP/ Federal Implementation Plan (FIP) or applicable requirement authorizing the emissions trade.

Section 70.7 Permit Issuance, Renewal, Reopenings, and Revisions

The District's regulations substantially meet the requirements of 40 CFR 70.7 for permit issuance, renewal, reopenings, and revisions. The following changes must be made to Chapter 3 in order to fully meet the requirements of 40 CFR 70.7:

1. The provisions of § 303.1(f) and § 303.1(e)(2) authorize an extension of 5 days from the permit issuance deadlines required in part 70. Sections 303.1(f) and 303.1(d)(1) must be revised to ensure that the Part 70 permit issuance deadlines will be met.

2. Section 303.3(a) language must be modified to clarify that public participation and EPA and affected state review will apply to the entire draft renewal permit, including those portions which are incorporated by reference.

3. Section 303.5(d)(1) prescribes the use of significant permit modification procedures for changes meeting certain criteria. So that all types of changes will be assigned a specified permit revision track, § 303.5(d)(1) must be revised to also require the use of the significant permit modification procedure for any type of change which does not qualify for either a minor permit modification or an administrative amendment.

4. The District must revise § 303.10 to provide for sending notice to persons on a mailing list developed by the permitting authority, including those people who request, in writing, to be on the list.

5. Section 303.10(a)(1)(B) must be revised to require the notice to include procedures to request a hearing in the event that a hearing has not been scheduled. Although not specified in the Chapter 3 regulations, the District must provide an opportunity to request a hearing if one has not been scheduled during the interim period.

6. Section 303.10 must be revised to include a provision that requires notice of a public hearing at least 30 days in advance of the hearing. Although not specified in the Chapter 3 regulations, the District must provide notice of a public hearing at least 30 days in advance of the hearing during the interim period.

Section 70.9 Fee Determination and Certification

The District's regulations substantially meet the requirements of 40 CFR 70.9 for fee determination and certification. The following changes must be made to Chapter 3 in order to fully meet the requirements of 40 CFR 70.9:

1. Section 305.2(b) must be revised to clarify that the August 1989 CPI value of 124.6 will not be used for the purposes of calculating the CPI fee adjustment and that the appropriate value of 122.15, the average 1989 CPI value, will be used instead.

2. Section 305.1 requires sources to pay an annual presumptive minimum fee ''or the equivalent over some other period''. Although appearing in section 502(b)(3)(A) of the CAA, the language ''or the equivalent over some other period'' as written into this section may allow for wide variations in the amount and timing of fee payments and could frustrate enforcement of the fee payment requirement. If the District intends to provide sources with the flexibility to pay fees pursuant to a pay schedule other than the annual presumptive minimum, section 305.1 must be revised to ensure that such equivalent fee schedule is enforceable as a practical matter. If the District does not intend to allow sources to pay fees other than the annual presumptive minimum, the section 305.1 language ''or the equivalent over some other period'' should be removed.

Section 70.11 Enforcement Authority

The District's regulations substantially meet the requirements of 40 CFR 70.11 for requirements for enforcement authority. The following changes must be made to subtitle I of 20 DCMR in order to fully meet the requirements of 40 CFR 70.11:

1. The enforcement provisions cited in the Corporation Counsel's opinion as

meeting the enforcement requirements of part 70 do not satisfy the requirements of § 70.11(a)(1) and (2). The District must either revise the Corporation Counsel's opinion to reference existing provisions in District of Columbia law which satisfy the requirements of 70.11(a) (1) and (2), or specifically establish authorities to restrain or enjoin immediately permit violators presenting substantial endangerment, and to seek injunctive relief for program and permit violations without the need for prior revocation of the permit. Whichever approach the District takes, the District's regulations must clearly establish that such enforcement authority extends to chapter 3.

2. The District must clarify that civil fines are recoverable for the violation of any applicable requirement, any permit condition, any fee or filing requirement, any duty to allow or carry out inspection, entry of monitoring activities or, any regulation or orders issued by the Mayor. The District must either amend the Subtitle I of 20 DCMR to specifically address the types of violations for which civil fines are recoverable, or otherwise have the Corporation Counsel demonstrate that section 100.6 applies to each of the specific types of violations mentioned in § 70.11(a)(3)(i).

3. As required by 40 CFR 70.11(a)(3), the District must establish civil enforcement authority for the collection of penalties in a maximum amount of not less than $10,000 per day per violation. Such civil penalties must be recoverable for the types of violations discussed in § 70.11(a)(3)(i).

4. With respect to the § 100.6 civil enforcement authority, the District must clarify that mental state is not allowed as an element of proof for civil violations. The District must either establish regulatory provisions for strict liability or provide a demonstration from the Corporation Counsel that mental state is not allowed as an element of proof for civil violations.

5. The District must clarify that criminal fines are recoverable for any knowing violations of applicable requirements, permit conditions, or fee or filing requirements. Criminal fines must also be recoverable against any person who knowingly makes any false material statement, representation or certification in any forms, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method. The District must either amend the subtitle I of 20 DCMR to specifically address the types of knowing violations for which criminal fines are recoverable or have the Corporation Counsel demonstrate that section 105.1 applies to each of the specific types of knowing violations mentioned in § 70.11(a)(3)(ii) and (iii).

6. Section 105.1 provides criminal enforcement authority for the recovery of fines in an amount not to exceed $10,000. Pursuant to the requirements of § 70.11(a)(3)(i), the District must revise the provisions pertaining to criminal enforcement so to authorize the collection of penalties in a maximum amount of not less than § 10,000 per day per violation. Such criminal penalties must be recoverable for the types of knowing violations discussed in § 70.11(a)(3)(ii) and (iii).

B. Variances

The District of Columbia has the authority to issue a variance from requirements imposed by the District under the ''District of Columbia Air Pollution Control Act of 1984'' (APCA). Under specific circumstances and following a specified procedure, section 103 of the APCA authorizes the Mayor to grant or deny requests for relief from APCA requirements. EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of the District's law. EPA has no authority to approve provisions of District law, such as the variance provisions referred to, which are inconsistent with the CAA. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a Part 70 permit in a manner inconsistent with Part 70 procedures.

C. Permit Fee Demonstration

Section 305 of the District's regulations requires owners or operators of part 70 sources to pay annual fees of twenty-five dollars ($25), adjusted by the CPI index, times the total tons of the actual emissions of each regulated pollutant (for presumptive fee calculation) emitted from part 70 sources, or an equivalent amount. All fees, penalties, and interest collected shall be deposited by the Mayor in a special District of Columbia Treasury fund, subject to appropriation, to carry out part 70 activities solely. The District's fee calculation, based on 1990 inventory data, shows that revenues will be able to cover the estimated costs of the program.

In chapter V. of the submittal entitled ''Permitting Program Documentation'', the District estimates revenues and costs associated with the implementation of its operating permits program. However, the District's projection of revenues is based on the August 1989 CPI value of 124.6 rather than the average 1989 CPI value of 122.15 required under the concept of presumptive minimum. Although Chapter V. demonstrates that revenues would have been adequate using the August 1989 value, section 305 requires the District to use the average 1989 value in calculating the CPI adjustment which will result in the collection of greater revenues. Until the District submits a revised fee rule accompanied by a detailed fee demonstration, the average 1989 value of 122.15 must be employed in the implementation of the chapter 3 operating permits program.

In addition to revenues obtained from the payment of emissions-based fees, the District's chapter V. projection of revenues includes revenues received from annual $200 operating fees assessed to each of the District's 38 sources. Because the imposition of the annual $200 operating fee is not authorized under any provision of the chapter 3 regulations, EPA cannot be certain that such fees will be paid. Accordingly, EPA has subtracted the revenue estimates from operating fees from total projected revenues for purposes of evaluating the adequacy of the District's fee program. The estimates of revenues from the authorized collection of emissions-based fees reveal that the District's program will have adequate funding to cover the direct and indirect costs of implementing the permit program during each of the first four years.

D. Support Materials

The District's part 70 operating permits program submittal substantially meets the requirements of 40 CFR 70.4 for an attorney general's legal opinion. Among the several issues required to be addressed in the attorney general's opinion, part 70 requires each opinion to demonstrate adequate authority for judicial review of final permit actions. Specifically, § 70.4(b)(3)(xi) requires the legal opinion to demonstrate authority to ensure that if the final permit action being challenged is the permitting authority's failure to issue or deny a permit within the required timeframes, a petition for judicial review may be filed any time before the permitting authority issues or denies the permit. Section XX. of the Corporation

Counsel's opinion cites DCMR 303.11 as the authority which fulfills this requirement. In doing so, it appears that the Corporation Counsel interprets District law such that each day which the Mayor fails to issue or deny a permit (after the permit issuance deadline) constitutes a new final action date for purposes of the 90-day judicial review petition deadline. However, the District's 303.11 regulations are vague in this regard and do not prohibit petitions for the Mayor's failure to act from being filed after the Mayor issues or denies the permit. The District must amend DCMR 303.11 to clarify that when the Mayor fails to issue or deny a permit within the required deadline, this failure can be challenged up until the time before the permitting authority denies the permit or issues the final permit.

The District's part 70 operating permits program substantially meets the requirements of 40 CFR 70.4 for a statement of adequate resources. Chapter VIII. of the District's submittal indicates that the Compliance and Enforcement Branch (CEB) of the District's Air Resources Management Division (ARMD) manages compliance and enforcement activities in the District. In chapters II., and V., the submittal indicates that title V fee revenues will support the hiring of 4 engineers in the Engineering and Planning Branch (EPB) of the ARMD who will perform engineering functions inclusive of permitting, inspections, compliance monitoring and reporting. Chapter II. of the submittal indicates that the EPB will collaborate with the CEB to carry out compliance and enforcement functions.

In order to fully meet the 40 CFR 70.4 requirement for a statement of adequate resources, the District must clarify the specific responsibilities and procedures for coordination regarding EPB and CEB involvement in compliance and enforcement activities for part 70 sources. The District must also demonstrate that compliance and enforcement activities (not including court costs or other costs associated with an enforcement action) will be fully supported by title V fees, including resources allocated to support CEB involvement in compliance and enforcement activities, if applicable.

The District's part 70 operating permits program submittal substantially meets the requirements of 40 CFR 70.4 for compliance tracking and enforcement. In order to fully meet the 40 CFR 70.4 requirement for compliance tracking and enforcement, the District must submit additional information regarding how the District will monitor and track source compliance (e.g., inspection/enforcement strategies, description of system to be used prior to/in conjunction with Aerometric Information Retrieval System (AIRS)/ AIRS Facility Subsystem (AFS) enhancements, etc.) or reference any agreement the District has with EPA that provides this information. The District must also clarify that information related to the District's enforcement actions will be submitted to EPA at least annually.

E. Provisions Implementing the Requirements of Title III

Implementing Title III Standards Through Title V Permits

Under the ''District of Columbia Air Pollution Control Act of 1984'', D.C. Law 5–165 as amended by D.C. Law 9–162, D.C. Code § 6–906 and Title 20, District of Columbia Municipal Regulations (20 DCMR), Chapter 3, the District of Columbia has demonstrated in its Title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements; however, the District has also indicated that additional regulatory authority may be necessary to carry out specific CAA section 112 activities. The District has therefore supplemented its broad legal authority with a commitment ''to adopt and implement expeditiously any additional regulations that might be needed to incorporate such requirements into operating permits.'' This is stated in the Operating Permit Program submittal, Chapter IX, entitled ''Provisions Implementing the Requirements of Other Titles of the Act'', paragraph B. EPA has determined that this commitment, in conjunction with the District of Columbia's broad statutory authority, adequately assures compliance with all the CAA's section 112 requirements. EPA regards this commitment as an acknowledgement by the District of Columbia of its obligation to obtain further legal authority as needed to issue permits that assure compliance with the CAA's section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

EPA is interpreting the above legal authority and commitment to mean that the District of Columbia is able to carry out all of the CAA's section 112 activities. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking which is located in the public docket and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, USEPA.

Implementation of 112(g) Upon Program Approval

EPA is proposing to approve the District's Chapter 3 operating permits program for the purpose of implementing section 112(g) during the transition period between federal promulgation of a section 112(g) rule and District adoption of 112(g) implementing regulations. EPA had until recently interpreted the CAA to require sources to comply with section 112(g) beginning on the date of approval of the Title V program regardless of whether EPA had completed its section 112(g) rulemaking. EPA has since revised this interpretation of the CAA as described in a February 14, 1995 **Federal Register** notice (see 60 FR 83333). The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The rationale for the revised interpretation is set forth in detail in the February 14, 1995 interpretive notice.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the District must be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption of implementing District regulations.

EPA believes that, although the District currently lacks a program designed specifically to implement section 112(g), the District's Chapter 3 permit program will serve as an adequate implementation vehicle during a transition period because it will allow the District to select control measures that would meet MACT on a case-by-case basis, as defined in section 112, and incorporate these measures into federally enforceable source-specific permits. Section 112(g) requirements for case-by-case MACT determinations are governed by the provisions of 20 DCMR, sections 301.1(a)(3), 303.9, and the section 399.1 definition of ''Applicable requirement''. However, in accordance with the provisions of section 112(g), the section 301.1(a)(3) requirement to obtain an operating permit or permit revision within twelve (12) months after

commencing operation must instead be satisfied prior to construction during the transition period.

This proposed approval clarifies that the operating permits program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by the District of Columbia of rules established to implement section 112(g). EPA is proposing to limit the duration of this approval to an outer limit of 18 months following promulgation by EPA of the section 112(g) rule. Comment is solicited on whether 18 months is an appropriate period taking into consideration the District's procedures for adoption of regulations.

However, since this proposed approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted.

Although section 112(l) generally provides the authority for approval of state air toxics programs, title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. If the District of Columbia does not wish to implement section 112(g) through its Chapter 3 permit program and can demonstrate that an alternative means of implementing section 112(g) exists during the transition period, EPA may, in the final action approving the District of Columbia's Part 70 program, approve the alternative instead.

Program for Straight Delegation of Section 112 Standards

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state programs contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the District of Columbia's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. For EPA-promulgated rules which are applicable to sources in the District, the District intends to request delegation after adopting the rules by incorporation by reference. The details of this delegation mechanism will be established prior to delegating any section 112 standards under the District's approved section 112(l) program for straight delegation. This program applies to both existing and future standards but is limited to sources covered by the Part 70 program.

F. Title IV Provisions/Commitments

As part of the program submittal, the District of Columbia committed to submit all missing portions of the title IV acid rain program by January 1, 1995. On February 3, 1995, the District submitted a letter notifying EPA that the January 1, 1995 date would not be met. In this letter, the District committed to having acid rain regulations in place by November 15, 1995 and provided a brief schedule for adoption of the necessary regulatory authorities.

III. Request for Public Comments

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in this federal rulemaking action by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing to grant interim approval to the operating permits program submitted by the District of Columbia on January 13, 1994. The scope of the District's Part 70 program applies to all Part 70 sources (as defined in the program) within the District, except for sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the CAA as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993). Prior to full approval by EPA, the District must make the following changes:

1. Rename section 399.1 definition of ''Emissions emissions'' to ''Fugitive emissions''.

2. If EPA establishes through rulemaking that the definition of ''Title I modifications'' must include changes reviewed under minor NSR, the District's definition of ''Title I modification or modification under any provision of title I of the Act'' will not fully meet the 40 CFR 70.2 requirements for definitions. If the impact of this deficiency becomes a basis for interim approval as a result of EPA's rulemaking, the District must revise its section 399.1 definition of the term ''Title I modification or modification under any provision of title I of the Act'' to conform to the requirements of part 70. At that time, EPA will determine the required timeframe, up to two years, to correct the deficiency.

3. Modify section 301.1(b)(6)(B) to clarify that applications for permit renewal must contain both a compliance plan, as required by section 301.3(h), and a compliance certification, as required by section 301.3(i).

4. Revise section 301.3(c)(1) to ensure that all applicable requirements will be described in permit applications.

5. Revise section 301.3(g) to correct misreferenced sections of the District's regulations which address alternate operating scenarios and emissions trading.

6. Revise section 301.3(h)(3)(C) to clarify that any schedule of compliance shall be supplemental to and shall not sanction noncompliance with the applicable requirements on which it is based.

7. Revise section 302.1(k) to clarify that terms and conditions for the trading or averaging of emissions must meet all applicable requirements and the requirements of the operating permits program.

8. Renumber section 302.3(e)(6) to 302.3(f).

9. Revise section 302.4(e) to clarify that requests for coverage under a general permit must meet the permit application requirements of title V of the Clean Air Act, and include all information necessary to assure compliance with the general permit.

10. Restructure section 302.8 for operational flexibility in accordance the structure of part 70 operational flexibility provisions.

11. Revise section 302.8(b) to clarify that compliance with emissions trading provisions in a permit will be determined according to requirements of the applicable SIP/FIP or applicable requirement authorizing the emissions trade.

12. Revise sections 303.1(f) and 303.1(d)(1) to ensure that the part 70 permit issuance deadlines will be met.

13. Modify section 303.3(a) to clarify that public participation and EPA and affected state review will apply to the entire draft renewal permit, including those portions which are incorporated by reference.

14. Revise section 303.5(d)(1) to require the use of the significant permit

modification procedure for any type of change which does not qualify as either a minor permit modification or an administrative amendment.

15. Revise section 303.10 to provide for sending notice to persons on a mailing list developed by the permitting authority, including those people who request in writing to be on the list.

16. Revise section 303.10(a)(1)(B) to require the notice to include procedures to request a hearing in the event that a hearing has not been scheduled.

17. Revise section 303.10 to include a provision that requires notice of a public hearing at least 30 days in advance of the hearing.

18. Revise section 305.2(b) to clarify that the August 1989 CPI value of 124.6 will not be used for the purposes of calculating the CPI fee adjustment and that the appropriate value of 122.15, the average 1989 CPI value, will be used instead.

19. Revise section 305.1 to ensure that provisions for equivalent fee schedules are enforceable as a practical matter or remove section 305.1 language ''or the equivalent over some other period''.

20. Revise the Corporation Counsel's opinion to reference existing provisions in District of Columbia law which satisfy the requirements of § 70.11(a)(1) and (2), or establish authorities to restrain or enjoin immediately permit violators presenting substantial endangerment, and to seek injunctive relief for program and permit violations without the need for prior revocation of the permit.

21. Amend subtitle I of 20 DCMR to specifically address the types of violations for which civil fines are recoverable, or otherwise have the Corporation Counsel demonstrate that section 100.6 applies to each of the specific types of violations mentioned in § 70.11(a)(3)(i).

22. Establish civil enforcement authority for the collection of penalties in a maximum amount of not less than $10,000 per day per violation.

23. Establish regulatory provisions for strict civil liability, or provide a demonstration from the Corporation Counsel that mental state is not allowed as an element of proof for civil violations.

24. Amend Subtitle I of 20 DCMR to specifically address the types of knowing violations for which criminal fines are recoverable, or have the Corporation Counsel demonstrate that section 105.1 applies to each of the specific types of knowing violations mentioned in § 70.11(a)(3)(ii) and (iii).

25. Revise criminal enforcement provisions to authorize the collection of penalties in a maximum amount of not less than $10,000 per day per violation.

26. Amend DCMR 303.11 to clarify that when the Mayor fails to issue or deny a permit within the required deadline, this failure can be challenged any time before the permitting authority denies the permit or issues the final permit.

27. Clarify the specific responsibilities and procedures for coordination regarding EPB and CEB involvement in compliance and enforcement activities for part 70 sources. Such a clarification must demonstrate that compliance and enforcement activities (not including court costs or other costs associated with an enforcement action) will be fully supported by title V fees.

28. Submit additional information regarding how the District will monitor and track source compliance or reference any agreement the District has with EPA that provides this information.

29. Clarify that information on the District's enforcement activities will be submitted to EPA at least annually.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the District is protected from sanctions for failure to have a fully approved title V, part 70 program, and EPA is not obligated to promulgate a federal permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass the CAA's section 112(l)(5) requirements for approval of a program for delegation of section 112 standards applicable to Part 70 sources as promulgated by EPA. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing under section 112(l)(5) and 40 CFR 63.91 to grant approval of the District's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action to propose interim approval of the District of Columbia's operating permits program pursuant to title V of the CAA and 40 CFR part 70 does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 9, 1995.

Stanley L. Laskowski,

Acting Regional Administrator.

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